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2D SESSION

H. R. 5215

To protect the confidentiality of information acquired from the public for statistical purposes, and to permit the exchange of business data among designated statistical agencies for statistical purposes only.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2002

Mr. HORN (for himself, Mr. SAWYER, and Mrs. MALONEY of New York) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To protect the confidentiality of information acquired from the public for statistical purposes, and to permit the exchange of business data among designated statistical agencies for statistical purposes only.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Confidential Informa-
5 tion Protection and Statistical Efficiency Act of 2002”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

1 (1) The term “agency” means any entity that
2 falls within the definition of the term “executive
3 agency” as defined in section 102 of title 31, United
4 States Code, or “agency”, as defined in section 3502
5 of title 44, United States Code.

6 (2) The term “agent”—

7 (A) means an employee of a private organi-
8 zation or a researcher affiliated with an institu-
9 tion of higher learning (including a person
10 granted special sworn status by the Bureau of
11 the Census under section 23(c) of title 13,
12 United States Code) with whom a contract or
13 other agreement is executed, on a temporary
14 basis, by an executive agency to perform exclu-
15 sively statistical activities under the control and
16 supervision of an officer or employee of that
17 agency; or

18 (B) means an individual who is working
19 under the authority of a government entity with
20 which a contract or other agreement is executed
21 by an executive agency to perform exclusively
22 statistical activities under the control of an offi-
23 cer or employee of that agency; or

24 (C) means an individual who is a self-em-
25 ployed researcher, a consultant, or a contractor,

1 or who is an employee of a contractor and with
2 whom a contract or other agreement is executed
3 by an executive agency to perform a statistical
4 activity under the control of an officer or em-
5 ployee of that agency; or

6 (D) means an individual who is a con-
7 tractor or who is an employee of a contractor
8 engaged by the agency to design or maintain
9 the systems for handling or storage of data re-
10 ceived under this Act; and

11 (E) who agrees in writing to comply with
12 all provisions of law that affect information ac-
13 quired by that agency.

14 (3) The term “business data” means operating
15 and financial data and information about businesses,
16 tax-exempt organizations, and government entities.

17 (4) The term “identifiable form” means any
18 representation of information that permits informa-
19 tion concerning a specific respondent to be reason-
20 ably inferred by either direct or indirect means.

21 (5) The term “nonstatistical purpose”—

22 (A) means the use of data in identifiable
23 form for any purpose that is not a statistical
24 purpose, including any administrative, regu-
25 latory, law enforcement, adjudicatory, or other

1 purpose that affects the rights, privileges, or
2 benefits of a particular identifiable respondent;
3 and

4 (B) includes the disclosure under section
5 552 of title 5, United States Code (the Free-
6 dom of Information Act) of data that are ac-
7 quired for exclusively statistical purposes under
8 a pledge of confidentiality.

9 (6) The term “respondent” means a person
10 who, or organization that, is requested or required
11 to supply information to an agency, is the subject of
12 information requested or required to be supplied to
13 an agency, or provides that information to an agen-
14 cy.

15 (7) The term “statistical activities”—

16 (A) means the collection, compilation,
17 processing, or analysis of data for the purpose
18 of describing or making estimates concerning
19 the whole, or relevant groups or components
20 within, economy, society, or natural environ-
21 ment; and

22 (B) includes the development of methods
23 or resources that support those activities, such
24 as measurement methods, models, statistical
25 classifications, or sampling frames.

1 (8) The term “statistical agency or unit” means
2 an agency or organizational unit of the executive
3 branch whose activities are predominantly the collec-
4 tion, compilation, processing, or analysis of informa-
5 tion for statistical purposes.

6 (9) The term “statistical purpose”—

7 (A) means the description, estimation, or
8 analysis of the characteristics of groups, with-
9 out identifying the individuals or organizations
10 that comprise such groups; and

11 (B) includes the development, implementa-
12 tion, or maintenance of methods, technical or
13 administrative procedures, or information re-
14 sources that support the purposes described in
15 subparagraph (A).

16 **SEC. 3. COORDINATION AND OVERSIGHT OF POLICIES.**

17 (a) IN GENERAL.—The Director of the Office of
18 Management and Budget shall coordinate and oversee the
19 confidentiality and disclosure policies established by this
20 Act.

21 (b) REVIEW AND APPROVAL OF RULES.—The Direc-
22 tor shall review any rules proposed by an agency pursuant
23 to this Act for consistency with the provisions of this Act
24 and chapter 35 of title 44, United States Code, and such
25 rules shall be subject to the approval of the Director.

1 **SEC. 4. EFFECT ON OTHER LAWS.**

2 (a) SECTION 3510 OF TITLE 44, UNITED STATES
3 CODE.—This Act, including amendments made by this
4 Act, does not diminish the authority under section 3510
5 of title 44, United States Code, of the Director of the Of-
6 fice of Management and Budget to direct, and of an agen-
7 cy to make, disclosures that are not inconsistent with any
8 applicable law.

9 (b) SECTIONS 8, 16, 301, AND 401 OF TITLE 13 AND
10 SECTION 2108 OF TITLE 44, UNITED STATES CODE.—
11 This Act, including amendments made by this Act, does
12 not diminish the authority of the Bureau of the Census
13 to provide information in accordance with sections 8, 16,
14 301, and 401 of title 13 and section 2108 of title 44,
15 United States Code.

16 (c) SECTION 9 OF TITLE 13, UNITED STATES
17 CODE.—This Act, including amendments made by this
18 Act, shall not be construed as authorizing the disclosure
19 for nonstatistical purposes of demographic data or infor-
20 mation collected by the Census Bureau pursuant to section
21 9 of title 13, United States Code.

22 (d) SECTION 12 OF THE FEDERAL ENERGY ADMIN-
23 STRATION ACT OF 1974.—In accordance with the provi-
24 sions of this Act, data acquired for exclusively statistical
25 purposes under a pledge of confidentiality are exempt from
26 mandatory disclosure in identifiable form for nonstatis-

1 tical purposes under section 12 of the Federal Energy Ad-
2 ministration Act of 1974 (15 United States Code 771).

3 (e) PREEMPTION OF STATE LAW.—Nothing in this
4 Act shall preempt applicable State law regarding the con-
5 fidentiality of data collected by the States.

6 (f) STATUTES REGARDING FALSE STATEMENTS.—
7 Notwithstanding section 102, information collected by an
8 agency for exclusively statistical purposes under a pledge
9 of confidentiality may be provided by the collecting agency
10 to a law enforcement agency for the prosecution of submis-
11 sions to the collecting agency of false statistical informa-
12 tion under statutes that authorize criminal penalties (such
13 as section 221 of title 13, United States Code) or civil
14 penalties for the provision of false statistical information,
15 unless such disclosure or use would otherwise be prohib-
16 ited under Federal law.

17 (g) CONSTRUCTION.—Nothing in this Act shall be
18 construed as restricting or diminishing any confidentiality
19 protections or penalties for unauthorized disclosure that
20 otherwise apply to data or information collected for statis-
21 tical purposes or nonstatistical purposes, including, but
22 not limited to, section 6103 of title 26, United States
23 Code.

TITLE I—CONFIDENTIAL INFORMATION PROTECTION

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Individuals, businesses, and other organizations have varying degrees of legal protection when providing information to the Federal Government for strictly statistical purposes.

(2) Pledges of confidentiality by the Federal Government provide assurances to the public that information about individuals or organizations or provided by individuals or organizations for exclusively statistical purposes will be held in confidence and will not be used against such individuals or organizations in any Federal Government action.

(3) Protecting the confidentiality interests of individuals or organizations who provide information for Federal statistical programs serves both the interests of the public and the needs of society.

(4) Declining trust of the public in the protection of information provided to the Federal Government adversely affects both the accuracy and completeness of statistical analyses.

(5) Ensuring that information provided for statistical purposes receives protection is essential in

1 continuing public cooperation in statistical pro-
2 grams.

3 (b) PURPOSES.—The purposes of this title are the
4 following:

5 (1) To ensure that information supplied by in-
6 dividuals or organizations to an agency for statistical
7 purposes under a pledge of confidentiality is used ex-
8 clusively for statistical purposes.

9 (2) To ensure that individuals or organizations
10 who supply information to the Federal Government
11 for statistical purposes will neither have that infor-
12 mation disclosed in identifiable form to anyone not
13 authorized by this Act nor have that information
14 used for any purpose other than a statistical pur-
15 pose.

16 (3) To safeguard the confidentiality of individ-
17 ually identifiable information acquired under a
18 pledge of confidentiality for statistical purposes by
19 controlling access to, and uses made of, such infor-
20 mation.

21 **SEC. 102. LIMITATIONS ON USE AND DISCLOSURE OF DATA**
22 **AND INFORMATION.**

23 (a) USE OF STATISTICAL DATA OR INFORMATION.—
24 Data or information acquired by an agency under a pledge
25 of confidentiality and for exclusively statistical purposes

1 shall be used by officers, employees, or agents of the agen-
2 cy exclusively for statistical purposes.

3 (b) DISCLOSURE OF STATISTICAL DATA OR INFOR-
4 MATION.—

5 (1) Data or information acquired by an agency
6 under a pledge of confidentiality for exclusively sta-
7 tistical purposes shall not be disclosed by an agency
8 in identifiable form, for any use other than an exclu-
9 sively statistical purpose, except with the informed
10 consent of the respondent.

11 (2) A disclosure pursuant to subparagraph
12 (b)(1) above is authorized only when the head of the
13 agency approves such disclosure and the disclosure
14 is not prohibited by any other law.

15 (3) This section does not restrict or diminish
16 any confidentiality protections in law that otherwise
17 apply to data or information acquired by an agency
18 under a pledge of confidentiality for exclusively sta-
19 tistical purposes.

20 (c) RULE FOR USE OF DATA OR INFORMATION FOR
21 NONSTATISTICAL PURPOSES.—A statistical agency or
22 unit shall clearly distinguish any data or information it
23 collects for nonstatistical purposes (as authorized by law)
24 by a rule that provides that the respondent supplying the
25 data or information is fully informed, before the data or

1 information is collected, that the data or information could
2 be used for nonstatistical purposes.

3 (d) DESIGNATION OF AGENTS.—A statistical agency
4 or unit may designate agents, by contract or by entering
5 into a special agreement containing the provisions re-
6 quired by section 2, who may perform exclusively statis-
7 tical activities, subject to the limitations and penalties de-
8 scribed in this Act.

9 **SEC. 103. FINES AND PENALTIES.**

10 Whoever, being an officer, employee, or agent of an
11 agency acquiring information for exclusively statistical
12 purposes, having taken and subscribed the oath of office,
13 or having sworn to observe the limitations imposed by sec-
14 tion 102 of this title, comes into possession of such infor-
15 mation by reason of his being an officer, employee, or
16 agent and, knowing that the disclosure of the specific in-
17 formation is prohibited under the provisions of this Act,
18 willfully discloses the information in any manner to a per-
19 son or agency not entitled to receive it, shall be guilty of
20 a class E felony and imprisoned for not more than 5 years,
21 or fined not more than \$250,000, or both.

22 **TITLE II—STATISTICAL**
23 **EFFICIENCY**

24 **SEC. 201. FINDINGS AND PURPOSES.**

25 (a) FINDINGS.—Congress finds the following:

1 (1) Federal statistics are an important source
2 of information for public and private decision-mak-
3 ers such as policymakers, consumers, businesses, in-
4 vestors, and workers.

5 (2) Federal statistical agencies should continu-
6 ously seek to improve their efficiency. Statutory con-
7 straints limit the ability of these agencies to share
8 data and thus to achieve higher efficiency for Fed-
9 eral statistical programs.

10 (3) The quality of Federal statistics depends on
11 the willingness of businesses to respond to statistical
12 surveys. Reducing reporting burdens will increase re-
13 sponse rates, and therefore lead to more accurate
14 characterizations of the economy.

15 (4) Enhanced sharing of business data among
16 the Bureau of the Census, the Bureau of Economic
17 Analysis, and the Bureau of Labor Statistics for ex-
18 clusively statistical purposes will improve their abil-
19 ity to track more accurately the large and rapidly
20 changing nature of U.S. business. In particular, the
21 statistical agencies will be able to better ensure that
22 businesses are consistently classified in appropriate
23 industries, resolve data anomalies, produce statis-
24 tical samples that are consistently adjusted for the
25 entry and exit of new businesses in a timely manner,

1 and correct faulty reporting errors quickly and effi-
2 ciently.

3 (5) Congress passed the International Invest-
4 ment and Trade in Services Act of 1990 that al-
5 lowed the Bureau of the Census, the Bureau of Eco-
6 nomic Analysis, and the Bureau of Labor Statistics
7 to share data on foreign-owned companies. The Act
8 not only expanded detailed industry coverage from
9 135 industries to over 800 industries with no in-
10 crease in the data collected from respondents but
11 also demonstrated how data sharing can result in
12 the creation of valuable data products.

13 (6) With title I of this Act, the sharing of busi-
14 ness data among the Bureau of the Census, the Bu-
15 reau of Economic Analysis, and the Bureau of Labor
16 Statistics continues to ensure the highest level of
17 confidentiality for respondents to statistical surveys.

18 (b) PURPOSES.—The purposes of this title are the
19 following:

20 (1) To authorize the sharing of business data
21 among the Bureau of the Census, the Bureau of
22 Economic Analysis, and the Bureau of Labor Statis-
23 tics for exclusively statistical purposes.

1 (2) To reduce the paperwork burdens imposed
2 on businesses that provide requested information to
3 the Federal Government.

4 (3) To improve the comparability and accuracy
5 of Federal economic statistics by allowing the Bu-
6 reau of the Census, the Bureau of Economic Anal-
7 ysis, and the Bureau of Labor Statistics to update
8 sample frames, develop consistent classifications of
9 establishments and companies into industries, im-
10 prove coverage, and reconcile significant differences
11 in data produced by the three agencies.

12 (4) To increase understanding of the United
13 States economy, especially for key industry and re-
14 gional statistics, to develop more accurate measures
15 of the impact of technology on productivity growth,
16 and to enhance the reliability of the Nation's most
17 important economic indicators, such as the National
18 Income and Product Accounts.

19 **SEC. 202. DESIGNATION OF STATISTICAL AGENCIES.**

20 For purposes of this title, the following shall here-
21 after be referred to as Designated Statistical Agencies:

22 (1) The Bureau of the Census in the Depart-
23 ment of Commerce,

24 (2) The Bureau of Economic Analysis in the
25 Department of Commerce, and

1 (3) The Bureau of Labor Statistics in the De-
2 partment of Labor.

3 **SEC. 203. RESPONSIBILITIES OF DESIGNATED STATISTICAL**
4 **AGENCIES.**

5 Designated Statistical Agencies shall:

6 (1) identify opportunities to eliminate duplica-
7 tion and otherwise reduce reporting burden and cost
8 imposed on the public in providing information for
9 statistical purposes;

10 (2) enter into joint statistical projects to im-
11 prove the quality and reduce the cost of statistical
12 programs; and

13 (3) protect the confidentiality of individually
14 identifiable information acquired for statistical pur-
15 poses by adhering to safeguard principles,
16 including—

17 (A) emphasizing to their officers, employ-
18 ees, and agents the importance of protecting
19 the confidentiality of individually identifiable in-
20 formation,

21 (B) training their officers, employees, and
22 agents in their legal obligations to protect the
23 confidentiality of individually identifiable infor-
24 mation and in the procedures that must be fol-
25 lowed to provide access to such information,

1 (C) implementing appropriate measures to
2 assure the physical and electronic security of
3 confidential data,

4 (D) establishing a system of records that
5 identifies individuals accessing confidential data
6 and the project for which the data were re-
7 quired, and

8 (E) being prepared to document their com-
9 pliance with safeguard principles to other agen-
10 cies authorized by law to monitor such compli-
11 ance.

12 **SEC. 204. SHARING OF BUSINESS DATA AMONG DES-**
13 **IGNATED STATISTICAL AGENCIES.**

14 (a) A Designated Statistical Agency may provide
15 business data in an identifiable form to another Des-
16 ignated Statistical Agency under the terms of a written
17 agreement among the agencies sharing the business data
18 that specifies—

19 (1) the business data to be shared;

20 (2) the statistical purposes for which the busi-
21 ness data are to be used;

22 (3) the officers, employees, and agents author-
23 ized to examine the business data to be shared; and

24 (4) appropriate security procedures to safe-
25 guard the confidentiality of the business data.

1 (b) The provision of business data by an agency to
2 a Designated Statistical Agency under this title shall in
3 no way alter the responsibility of the agency providing the
4 data under other statutes (including the Freedom of Infor-
5 mation Act and the Privacy Act) with respect to the provi-
6 sion or withholding of such information by the agency pro-
7 viding the data.

8 (c) Examination of business data in identifiable form
9 shall be limited to the officers, employees, and agents au-
10 thorized to examine the individual reports in accordance
11 with written agreements pursuant to this section. Officers,
12 employees, and agents of a Designated Statistical Agency
13 who receive data pursuant to this title shall be subject to
14 all provisions of law, including penalties, that relate:

15 (1) to the unlawful provision of the business
16 data that would apply to the officers, employees, and
17 agents of the agency that originally obtained the in-
18 formation; and

19 (2) to the unlawful disclosure of the business
20 data that would apply to officers, employees, and
21 agents of the agency that originally obtained the in-
22 formation.

23 (d) NOTICE.—Whenever a written agreement con-
24 cerns data that respondents were required by law to report
25 and the respondents were not informed that the data could

1 be shared among the Designated Statistical Agencies, for
2 exclusively statistical purposes, the terms of such agree-
3 ment shall be described in a public notice issued by the
4 agency that intends to provide the data. Such notice shall
5 allow a minimum of 60 days for public comment.

6 **SEC. 205. LIMITATIONS ON USE OF BUSINESS DATA PRO-**
7 **VIDED BY DESIGNATED STATISTICAL AGEN-**
8 **CIES.**

9 (a) Business data provided by a Designated Statis-
10 tical Agency pursuant to this title shall be used exclusively
11 for statistical purposes as defined by this Act.

12 (b) Publication of business data acquired by a Des-
13 ignated Statistical Agency shall occur in a manner where-
14 by the data furnished by any particular respondent are
15 not in identifiable form.

16 **SEC. 206. CONFORMING CHANGES IN LAW.**

17 (a) DEPARTMENT OF COMMERCE.—Section 1 of the
18 Act of January 27, 1938 (15 United States Code 176a)
19 is amended by—

20 (1) striking “The” and inserting “Except as
21 provided in the Confidential Information Protection
22 and Statistical Efficiency Act of 2002, the”;

23 (2) chapter 10 of title 13, United States Code,
24 is amended by adding after section 401 the fol-
25 lowing:

1 **“SEC. 402. PROVIDING BUSINESS DATA TO DESIGNATED**
2 **STATISTICAL AGENCIES.**

3 “The Bureau of the Census may provide business
4 data to the Bureau of Economic Analysis and the Bureau
5 of Labor Statistics (‘Designated Statistical Agencies’) if
6 such information is required for an authorized statistical
7 purpose and the provision is the subject of a written agree-
8 ment with that Designated Statistical Agency, or their
9 successors, as defined in the Confidential Information
10 Protection and Statistical Efficiency Act of 2002.”; and

11 (3) the table of sections for chapter 10 of title
12 13, United States Code, is amended by adding after
13 the item relating to section 401 the following:

“402. Providing business data from the Bureau of the Census to Designated
Statistical Agencies.”.

○